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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional): 15437-0536

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on March 29, 2006

Signature: Judy Paradoski

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Application Number	Filed
09/885,632	June 19, 2001

First Named Inventor: Christopher H. Elving

Art Unit	Examiner
2194	Li B. Zhen

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
Note: No more than five (5) pages may be provided.

I am the

- [ ] applicant/inventor.
- [ ] assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)
- [X] attorney or agent of record. Registration number 50,266
- [ ] attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____

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NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

[X] *Total of 1 forms are submitted.

REMARKS

As will be seen from the discussion below, there are clear errors of fact in the Examiner's rejections.

Claim 1 recites, *inter alia*, "if the buffer array entry indicates the particular value at the particular time, then, in response to a determination at the particular time that the buffer array entry indicates the particular value, **incrementing the buffer index value without attempting to obtain a lock on the particular data buffer**."

The Examiner alleges that this aspect of Claim 1 is disclosed in U.S. Patent No. 6,173,307 ("Drews") at col. 5, lines 16-45. Specifically, the Examiner alleges that the incrementing of the buffer index value, as described in Claim 1, is analogous to a "producer-completer's" (discussed below) incrementing of the "next-ready" marker described with reference to block 818 of Drews' FIG. 8.

The question, then, is whether the "producer-completer" that increments Drews' "next-ready" marker in block 818 does so **without attempting to obtain a lock.** To answer this question, it must first be determined which actions, in Drews, the Examiner thinks are analogous to "obtaining a lock."

The Examiner analogizes the "lock" of Claim 1 to the "mutual exclusion token" described in Drews, col. 5, lines 7-28. According to this section, when a "producer" discovers that the former value of the "mutual exclusion token" was "false" prior to that "producer" setting the value of the "mutual exclusion token" to "true," the "producer" becomes the "producer-completer." Critically, **only** the "producer-completer" is allowed to increment the "next-ready" marker (Drews, col. 5, lines 2-9). Thus, the Examiner believes that the actions that a "producer" performs in order to become the "producer-completer" are analogous to the obtaining of a lock as described in Claim 1.

It is clear, then, that the answer to the above question must be "no." The "producer-completer" does **not** increment the "next-ready" marker in block 818 **without attempting to obtain a lock** according to the Examiner's interpretation of "obtaining a lock." According to Drews' approach, **only** a "producer-completer" is allowed to increment the "next ready" marker in block 818, and a "producer" **only** becomes the "producer-completer" **after** performing the actions that the Examiner interprets as "obtaining a lock" (see block 716 and path 722 of Drews' FIG. 7, which precede block 818 of Drews' FIG. 8). If a "producer" does **not** perform the actions that the Examiner interprets as "obtaining a lock," then that "producer" **is not allowed** to increment the "next-ready" marker in block 818—that producer did not acquire "the lock."

Therefore, the Examiner makes a **clear error** of fact when the Examiner alleges that Drews discloses "if the buffer array entry indicates the particular value at the particular time, then, in response to a determination at the particular time that the buffer array entry indicates the particular value, **incrementing the buffer index value without attempting to obtain a lock on the particular data buffer**" as recited in Claim 1.

This is not the only clear error of fact that the Examiner makes. As is discussed above, the Examiner analogizes the "buffer index value" of Claim 1 to the "next-ready" marker in Drews (actually, the Examiner appears, incredibly, to analogize the single "buffer index value" simultaneously to two separate and distinct markers described in Drews, but this analogy is so bizarre and metaphysical as to be immediately ridiculous). Claim 1 recites, *inter alia*, "reading a buffer index value **that identifies a data buffer that was last used for buffering data**." Drews' "next-ready" marker **clearly doesn't** identify the slot (the alleged "data buffer") that was **last used** for buffering data.

A thorough discussion of why Drews' "next-ready" marker **doesn't** identify a data buffer that was **last used** for buffering data is presented in the first full paragraph on page 4 of Applicants' response to the Final Office Action mailed on December 30, 2005. A quick glance at Drews' FIG. 4 clearly reveals that the "next-ready" marker is pointing to a "full" slot 410, while slot 414 is currently being used to buffer data (slot 414 being only partially full). Since slot 414 is being used **more recently** to buffer data than slot 410, to which the "next-ready" marker refers, the "next-ready" marker clearly doesn't identify the data buffer that was "**last used**" for buffering data. Furthermore, despite the presence of the "next-ready" marker, there is no way of knowing which of recently used slots 410, 412, and 416 was "last used" to buffer data (see col. 4, lines 37-41).

Therefore, the Examiner makes a **clear error** of fact when the Examiner alleges that Drews discloses "reading a buffer index value **that identifies a data buffer that was last used for buffering data**" as recited in Claim 1.

For at least the above reasons, Claim 1 is patentable over Drews under 35 USC § 102(e). The remaining pending claims depend from Claim 1, are analogous to Claim 1, or depend from a claim that is analogous to Claim 1. Therefore, all of the pending claims are patentable over Drews under 35 USC § 102(e). Additionally, none of the other cited references discloses, teaches, or suggests the features of Claim 1 that Drews fails to disclose.

Applicants request that the rejections of all the pending claims be reversed.